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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FOURTH AGE LTD., *et al*,

Plaintiffs,

v.

WARNER BROS. DIGITAL
DISTRIBUTION, *et al*,

Defendants.

WARNER BROS. DIGITAL
DISTRIBUTION INC., *et al*,

Counterclaim
Plaintiffs,

v.

FOURTH AGE LTD., *et al*,

Counterclaim
Defendants.

Case No. 12-9912-AB (SHx)

DISCOVERY MATTER

**WARNER AND ZAENTZ'S
OPPOSITION TO THE TOLKIEN/HC
PARTIES' *EX PARTE* APPLICATION
FOR STAY OF THE MAGISTRATE'S
AUGUST 12, 2014 ORDER**

Judge: Hon. André Birotte, Jr.
Magistrate: Hon. Stephen J. Hillman

Discovery Cut-Off: July 29, 2014

1 There is no basis to stay the Court's *in camera* review Order because the
2 Tolkien/HC Parties' time to seek review of that Order has already passed. The
3 Court ordered *in camera* review on July 22, 2014: "Warner and Zaentz may each
4 select and advise the court of [75 total] logged documents which they wish the
5 court to review in camera." Dkt 280. The Tolkien/HC Parties' time to seek review
6 of the July 22 Order expired on August 6. *See* Fed. R. Civ. Proc. 72(a). The
7 Tolkien/HC Parties misidentify their forthcoming motion before the District Judge
8 as one seeking review of the August 12 Order. *See* Dkt 295. But on August 12, the
9 Court only *confirmed* its July 22 Order by "not[ing] that Warner and Zaentz's
10 interpretation of this court's July 22 Order (document 280) is correct," and giving
11 the Tolkien/HC Parties ten days to comply with it. Dkt 294. As the *ex parte*
12 application makes clear, the Tolkien/HC Parties' objection is with the underlying *in*
13 *camera* review and not with the 10-day compliance deadline.

14 The Tolkien/HC Parties' request for *ex parte* relief is also improper because
15 it fails to identify any "irreparable injury or prejudice not attributable to the lack of
16 diligence of the moving party." *See* L.R. 37-3. Not only was the *in camera* review
17 Order issued over three weeks ago, the Tolkien/HC Parties have not identified any
18 "irreparable injury or prejudice" that would be caused by the Court's *in camera*
19 review of the documents. The Court has not yet ordered the production of these
20 documents to the other parties. As the Court's July 22 Order makes clear, the *in*
21 *camera* review is merely a "limited," "initial" step to determine if further relief is
22 warranted, Dkt 280, and the Court was clearly within its discretion to take such a
23 step. *See In re Grand Jury Investigation*, 974 F.2d 1068, 1074-75 (9th Cir. 1992).
24 In fact, the Tolkien/HC Parties have already requested "that they be granted the
25 same relief," Dkt 288 at 4-5, which request was correctly denied because it was not
26 properly before the Court. Dkt 294. They cannot now be heard to complain that
27 this relief causes them irreparable injury or prejudice.

1 For all these reasons, the requested stay should be denied.

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3 Dated: August 14, 2014

Respectfully Submitted,

4 O'MELVENY & MYERS LLP

5
6 By: /s/ Daniel M. Petrocelli
7 Daniel M. Petrocelli
8 Attorneys for Warner Defendants
and Counterclaim Plaintiffs

9
10 Dated: August 14, 2014

11 ARNOLD & PORTER LLP

12 By: /s/ Martin R. Glick
13 Martin R. Glick
14 Attorneys for Zaentz Defendants and
Counterclaim Plaintiffs

1 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other
2 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
3 content and have authorized the filing.

4
5 Dated: August 14, 2014

Respectfully Submitted,

6 O'MELVENY & MYERS LLP

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8 By: /s/ Daniel M. Petrocelli
9 Daniel M. Petrocelli
10 Attorneys for Warner Defendants
11 and Counterclaim Plaintiffs
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